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The Trans-Pacific Free-Trade Charade

NEW YORK – As negotiators and ministers from the United States and 11 other Pacific Rim countries meet in Atlanta in an effort to finalize the details of the sweeping new [Trans-Pacific Partnership](#) (TPP), some sober analysis is warranted. The biggest regional trade and investment agreement in history is not what it seems.

You will hear much about the importance of the TPP for “free trade.” The reality is that this is an agreement to *manage* its members’ trade and investment relations – and to do so on behalf of each country’s most powerful business lobbies. Make no mistake: It is evident from the main outstanding issues, over which negotiators are still haggling, that the [TPP is not about “free” trade](#).

New Zealand has threatened to walk away from the agreement over the way Canada and the US manage trade in dairy products. Australia is not happy with how the US and Mexico manage trade in sugar. And the US is not happy with how Japan manages trade in rice. These industries are backed by significant voting blocs in their respective countries. And they represent just the tip of the iceberg in terms of how the TPP would advance an agenda that actually runs *counter* to free trade.

For starters, consider what the agreement would do to expand intellectual property rights for big pharmaceutical companies, as we learned from leaked versions of the negotiating text. [Economic research](#) clearly shows the argument that such intellectual property rights promote research to be weak at best. In fact, there is evidence to the contrary: When the Supreme Court invalidated Myriad’s patent on the BRCA gene, it led to a burst of innovation that resulted in better tests at lower costs. Indeed, provisions in the TPP would restrain

open competition and raise prices for consumers in the US and around the world – anathema to free trade.

The TPP would manage trade in pharmaceuticals through a variety of seemingly arcane rule changes on issues such as “patent linkage,” “data exclusivity,” and “biologics.” The upshot is that pharmaceutical companies would effectively be allowed to extend – sometimes almost indefinitely – their monopolies on patented medicines, keep cheaper generics off the market, and block “biosimilar” competitors from introducing new medicines for years. That is how the TPP will manage trade for the pharmaceutical industry if the US gets its way.

Similarly, consider how the US hopes to use the TPP to manage trade for the tobacco industry. For decades, US-based tobacco companies have used foreign investor adjudication mechanisms created by agreements like the TPP to fight regulations intended to curb the public-health scourge of smoking. Under these investor-state dispute settlement (ISDS) systems, foreign investors gain new [rights to sue national governments](#) in binding private arbitration for regulations they see as diminishing the *expected* profitability of their investments.

International corporate interests tout ISDS as necessary to protect property rights where the rule of law and credible courts are lacking. But that argument is nonsense. The US is seeking the same mechanism in a similar mega-deal with the European Union, the [Transatlantic Trade and Investment Partnership](#), even though there is little question about the quality of Europe’s legal and judicial systems.

To be sure, investors – wherever they call home – deserve protection from expropriation or discriminatory regulations. But ISDS goes much further: The obligation to compensate investors for losses of expected profits can and has been applied even where rules are nondiscriminatory and profits are made from causing public harm.

Philip Morris International is currently prosecuting such cases against Australia and Uruguay (not a TPP partner) for requiring cigarettes to carry warning labels. Canada, under threat of a similar suit, backed down from introducing a similarly effective warning label a few years back.

Given the veil of secrecy surrounding the TPP negotiations, it is not clear whether tobacco will be excluded from some aspects of ISDS. Either way, the broader issue remains: Such provisions make it hard for governments to conduct their basic functions – protecting their citizens’ health and safety, ensuring economic stability, and safeguarding the environment.

Imagine what would have happened if these provisions had been in place when the lethal effects of asbestos were discovered. Rather than shutting down manufacturers and forcing them to compensate those who had been harmed, under ISDS, governments would have had to pay the manufacturers *not* to kill their citizens. Taxpayers would have been hit twice – first to pay for the health damage caused by asbestos, and then to compensate manufacturers for their lost profits when the government stepped in to regulate a dangerous product.

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It should surprise no one that America’s international agreements produce managed rather than free trade. That is what happens when the policymaking process is closed to non-business stakeholders – not to mention the people’s elected representatives in Congress.

Read more at <https://www.project-syndicate.org/commentary/trans-pacific-partnership-charade-by-joseph-e--stiglitz-and-adam-s--hersh-2015-10#j62T4us7gMgFejJV.99>

The TTP, A Sketch of What’s Included (Oct 15, 2015)

Compiled from Canadian & U.S. Media, Oct 8 – 15, 2015

Investor – State Dispute Settlement (ISDS)

- Leaked texts show the TPP will create even more opportunities than in NAFTA for corporations to challenge public decisions.

Intellectual property (copyright, patents, etc.) & regulation of internet use.

- changed copyright regulations could restrict the open Internet, make it illegal to circumvent digital locks on copyrighted material even for non-infringing purposes, stifle innovation, raise the prices of books, CDs and movies, and reduce economic opportunities to businesses, creators and the public.

Standards

- Technical standards ?
- Labour . Enforceable rules banning child labour and entrenching the rights of workers in member countries to unionize. **Better mobility for some high-skilled & business workers**”, ie. reduce hurdles for employees to work temporarily at affiliate offices of their employer in other member countries.
- Sanitary measures ?
- Environmental standards. No strong enforcement. It potentially puts a screen on all environmental policies to make sure they do not hurt trade and investment.

Crown Corporations

- More regulation when in competition with private companies. Diminished ability to act in the public interest.

Financial services

- Eased movement of people – bankers, engineers, architects, environmental consultants & their spouses.

Public Services

- Government procurement: Canadian companies will have more access to bidding on other governments’ projects, including US.
- “Nothing in the TPP agreement prevents governments from regulating in the public interest, including with regard to adopting measures to promote culture, delivering public services like health and education or providing protections for Aboriginal peoples,” Government of Canada.

Industrial Sectors / Goods

- Beef & pork. Canadian beef exports to Japan currently subject to tariffs of over 38 per cent, will have tariffs lowered to 9 per cent over the next 15 years; Vietnam will lower tariffs within 2 years.
- Canola, malt barley. Tariffs will be eliminated or lowered across the TPP region, either immediately or over a phase-in period ranging from five to 15 years, for:

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- Fish & Seafood (Japan will eliminate 66% of tariffs immediately)
- Forestry products
- Mining. Value of Canadian minerals exported to TTP countries/year: \$169 billion. Tariffs will be eliminated. Current tariffs: Australia 5 %; Japan 7.9 %; Vietnam 40 %, and Malaysia up to 50 %.
- Alcohol. Whisky tariffs will drop over 15 year period, different for each country; wine tariffs will drop immediately in Aus & NZ, in 7 years from signing in Japan.
- Auto manufacturing and parts. NAFTA “Rules of Origin” replaced and reduced from 60% parts made in country of origin to 45%. Cdn government has promised \$1 billion transition assistance to the industry. Estimated job loss – 20,000.
- Heavy industry (farming & construction equipment, aerospace). Elimination of all tariffs in all countries.
- Dairy. Foreign producers get 3.25 % of Canada’s market. Producers get \$4.3 billion transition assistance).
- Pharmaceuticals. 8 year patent protection. ?\$ compensation to provinces?.
Biologics (vaccines, blood products). 5 year patent protections.